

SALMON RIVER CANAL CO., LTD.

IBLA 71-104

Decided September 1, 1972

Appeal from Idaho land office, Bureau of Land Management, decision (I-3755) rejecting an application to purchase land pursuant to the Color of Title Act.

Affirmed.

Color or Claim of Title -- Generally

An application to purchase public lands under the Color of Title Act is properly rejected when the applicant can not show title derived from a source other than the United States, or an instrument conveying title, but merely relies on good faith occupancy and adverse possession.

APPEARANCES: Lloyd J. Webb, Esq., of Rayborn, Rayborn, Webb, and Pike, attorneys-at-law, for the appellant.

OPINION BY MR. RITVO

The Salmon River Canal Company, Ltd., has appealed to the Secretary of the Interior from a decision dated October 16, 1970, of the Boise land office rejecting its application to purchase certain public land pursuant to the Color of Title Act of December 22, 1928, as amended, 43 U.S.C. § 1068 (1970).

The Salmon River Canal Company, Ltd., is a corporation which operates an irrigation system providing water to land in the vicinity of Twin Falls, Idaho. In 1908, the company (or its predecessors) constructed a dam and reservoir to secure the needed water for the irrigation project. To provide for a system of maintenance and regulation of the water supply, the company hired a gatekeeper and constructed a house to serve as his permanent residence. The company used a site adjacent to the dam and conveniently located for the fulfillment of the necessary maintenance and regulatory duties. This tract, comprising 4.14 acres, is located in the NW 1/4, Sec. 17, T. 14 S., R. 15 E., Boise Meridian, Idaho, and is now the subject of the company's application. The company states that it occupied the land in 1908 under the impression that the property was

owned by the corporation since it owns other land in the vicinity of the reservoir site. The appellant alleges that possession has been continuous and hostile and adverse to all other claims during the ensuing 60 years. It was not until 1969 that the company was informed by the Bureau of Land Management of the defect in its title.

The company filed its color of title application in the land office on October 7, 1970. In rejecting the application, the land office stated that a color of title claim must be derived from a source other than the United States and must be based on some type of written instrument or deed of conveyance and not on mere possession. The Salmon Company had failed to show that its claim was based on any instrument purporting to convey title to the land. Notice of appeal was filed on November 16, 1970.

The Color of Title Act provides for the purchase of public land which the claimant, his ancestors or grantors have held in good faith and peaceful adverse possession under claim or color of title for more than 20 years and upon which valuable improvements have been placed or which has been cultivated. <sup>1/</sup>

In its appeal, the company contends that it is not required to show a title resting on a written instrument derived from some source other than the United States. Further, the company interprets the Act to read that entry on the land in good faith and holding it continuously for the requisite time is sufficient to satisfy the requirements of the Act.

The appellant has failed to submit any evidence describing the land it holds in the area, how or when it acquired its lands, or its basis for determining that the tract applied for was land owned by the company.

As the land office pointed out, it is well established that an allowable application under the Act must be based on possession under some color or claim of title derived from a source other than the United States. Minnie Wharton, 79 I.D. \_\_\_ (1972) 4 IBLA 287, 295 (1972); Nina R. B. Levinson and Clare R. Sigfried, 78 I.D. 30, 32 (1971). The usual way to support an application is by offering a claim of title showing how the land came into the possession of the applicant.

---

<sup>1/</sup> Another provision sets up other conditions not material here under which lands also may be purchased.

The Department has stated: "It is well established that a claim or color of title must be established, if at all, by a deed or other writing which purports to pass title and which appears to be title to the land, but which is not title." Minnie E. Wharton, supra. The appellant has made no showing of a document of title.

The company, however, has stated that it owns other land in the vicinity of the contested tract. Even if this assertion is meant to indicate a good faith belief that the tract was part of other company land, it fails to satisfy the Color of Title Act. The possession and improvement or cultivation of public land in the mistaken belief that it was included within other land patented to an applicant or his predecessors does not support a color or claim of title under the Act. Wisconsin Michigan Power Company, A-31037 (December 18, 1969), petition for reconsideration denied, IBLA 71-30 (March 19, 1971).

As we have noted above, the appellant denies the relevancy of these propositions and asserts that the Act requires only that entry shall have been made under belief of a right to the lands at time of entry followed by possession for the statutory period. The Department has often held that adverse possession and occupancy of public land based on the mistaken belief that one owns the land does not constitute a claim or color of title under the Color of Title Act. Wisconsin Michigan Power Company, supra; John H. Ismay, A-29930 (June 30, 1964); Thomas Ormachea, A-30092 (May 8, 1964).

Accordingly, we conclude that the color of title application was properly rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision of the land office is affirmed.

Martin Ritvo  
Member

We concur:

Joan B. Thompson  
Member

Frederick Fishman  
Member

